

Message Text

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ACTION L-02

INFO OCT-01 EA-10 ISO-00 JUSE-00 DODE-00 PM-03 /016 W

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R 141052Z MAR 75

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC 1634

INFO 388CSG KORAT RTAFB THAI/JA

UNCLAS BANGKOK 4297

E.O. 11652: N/A

TAGS: MILI, TH

SUBJECT: CIVIL LITIGATIONS: S. LENG VS KORAT AB NCO OPEN MESS,
ET AL

STATE FOR OFFICE OF LEGAL ADVISER

STATE PEASE PASS JUSTICE, ATTN: CIVIL DIVISION

REF: A) BANGKOK 2435;
B) BANGKOK 2757

1. FOLLOWING MESSAGE WAS RECEIVED FROM 388 CSG KORAT RTAFB
THAILAND, DTG 120750Z MAR 75:

" PLAINTIFF LENG AND ATTORNEY MET ON 11 MARCH 1975 WITH
ATTORNEYS FROM THIS OFFICE AT OUR REQUEST TO DISCUSS
SETTLEMENT POSSIBILITIES.

PRELIMINARILY, WE STATED OUR POSITION: THAT USAF
TERMINATED THE CONTRACT FOR CAUSE AND IS THEREFORE UNDER
NO LIABILITY FOR DAMAGES: USG WAS WILLING TO NEGOTIATE A
SETTLEMENT, IF POSSIBLE, IN ORDER TO DISPENSE WITH THE
TROUBLE OF A LAW-SUIT. WE FURTHER MADE CLEAR THAT WE
COULD NOT BIND USG AS TO SETTLEMENT FIGURE, BUT COULD ONLY
RECOMMEND AS AMOUNT TO CSAF:JACI.

THE ELEMENTS OF DAMAGES SET FORTH IN THE COMPLAINT
TOTAL ONE MILLION EIGHT HUNDRED SEVENTY-EIGHT THOUSAND
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SEVEN HUNDRED FIFTY BAHT (BAHT 1,878,750,00). THIS REPRESENTS

MONTHLY DAMAGES FOR THE SEVEN MONTHS THAT THE CONTRACT HAD LEFT TO RUN. PLUS DAMAGES TO REPUTATION AND GOOD WILL.

IT APPEARS THAT LENG COULD HAVE TERMINATED HIS SUB-CONTRACTS WITHIN THIRY DAYS OF HIS OWN NOTICE OF TERMINATION. THEREFORE, WE OFFERED TO PAY THE FOLLOWING ITEMS: A) SUBCONTRACT PENALTY OF FIVE THOUSAND BAHT (BAHT 5,000) PER DAY, FOR THIRTY DAYS. ONE HUNDRED FIFTY THOUSAND BAHT (BAHT 150,000) B) WAGES OF DRIVERS FOR ONE MONTH, FIFTEEN HUNDRED BAHT (BAHT 1,500) C) WAGES OF MANAGER FOR ONE MONTH, TWO THOUSAND FIVE HUNDRED BAH (BAHT 2,500) D) WAGES OF CLERK FOR ONE MONTH, SEVEN HUNDRED FIFTY BAHT (BAHT 750); 3) WAGES OF THREE DELIVERY PERSONS FOR ONE MONTH, FIFTEEN HUNDRED BAHT (BAHT 1,500); F) LOSS OF PROFITS FOR ONE MONTH, FORTY THOUSAND BAHT (BAHT 40,000) G) LOSS OF GOOD WILL AND REPUTATION, A TOKEN OFFER OF TEN THOUSAND BAHT (BAHT 10,000) TOTAL OFFER OF TWO HUNDRED SIX THOUSAND, TWO HUNDRED FIFTY BAHT (BAH 206,250)

PLAINTIFF ACCEPTED THE ONE MONTH LIMITATION ON EMPLOYEES WAGES AS BEING REQUIRED BY THAI LAW. WE REMAIN FAR APART ON OTHER TERMS, HOWEVER. LENG DEAMDNDED THE FOLLOWING AMOUNTS: A) SUBCONTRACT PENALTY FOR NINETY DAYS. FOUR HUNDRED FIFTY THOUSAND BAHT (BAHT 450,000); EMPLOYEES WAGES, UNDER (B) (C) (D) AND (E) ABOVE WERE AGREED TO BE SIX THOUSAND TWO HUNDRED AND FIFTY BAHT (BAHT 6,250) F) LOSS OF PROFITS FOR SEVEN MONTHS, TWO HUNDRED EIGHTY THOUSAND BAHT (BAHT 280,000). (G) LOSS OF GOOD WILL AND REPUTATION. ONE HUNDRED THOUSAND BAHT (BAHT 100,000); TATAL OFFER OF EIGHT HUNDRED THIRTY SIX THOUSAND BAHT (BAHT 836,000)

WE EXPLAINED TO LENG THAT HE SHOULD HAVE TERMINATED HIS SUBCONTRACT AS SOON AS HIS OWN WAS TERMINATED, AND THAT USG WOULD NOT PAY FOR MORETHAN THIRTY DAYS WE FURTHER STATED THIS ITEM OF DANGES WAS NOT FORSEEABLE EVEN IF THE USG HAD BREACHED THE CONTRACT, AND THERE WAS, THEREFORE, NO LEGAL BASIS FOR SUBCONTRACT DAMAGES. FURTHER, WE STATED USG'S POSITION THAT CONTRACT WAS RIGHFULLY TERMINATED AND HIS CLAIM TO LOSS OF GOOD WILL AND REPU-
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TATION WAS ENTIRELY UNFOUNDED. WE EXPLAINED HE COULD NOT PROVE LOSS OF GOOD WILL TO EXTENT OF ONE HUNDRED THOUSAND BAHT (BAHT 100,000) USG WOULD NOT OFFER MORE THAN TEN THOUSAND BAHT (BAHT 10,000) AS EVIDENCE OF ITS SINCERE DESIRE TO SETTLE THE CASE OUT OF COURT. WHEN TOLD THAT EVEN IF HE WERE TO PREVAIL INCOURT THERE WAS NO WAY A THAI COURT COULD ATTACH FUNDS OF THE USG, HE STATED THAT IF THE USG FAILED TO HONOR THE THAI COURT AND THE LAWS OF

THAILAND THAT WAS OUR BUSINESS.

FINALLY, WE OFFERED TO INCREASE THE OFFER OF PAYMENT FOR LOSS OF PROFITS FROM ONE MONTH TO TWO MONTHS, OR EIGHTY THOUSAND BAHT (BAHT 80,000) THIS WOULD INCREASE USG OFFICER TO TWO HUNDRED FORTY SIX THOUSAND, TWO HUNDRED FIFTY BAHT (BAHT 246,250) WHICH WE OFFERED TO ROUND TO TWO HUNDRED FIFTY THOUSAND (BAHT 250,000) PLAINTIFF REJECTED THIS AS BEING COMPLETELY TOO LOW.

PLAINTIFF EXPRESSED AN UNDERSTANDING OF THE HAZARDS OF LITIGATION WITH FOREIGN SOVEREIGN. BUT STATED THAT HE WANTED A "FAIR" SETTLEMENT AND WOULD TAKE HIS CHANCES IN COURT. PLAINTIFF AND HIS ATTORNEY DEPARTED THE BASE WITH ALL PARTIES AGREEING TO GIVE FURTHER THOUGHT TO THE MATTER, AND WITH THE UNDERSTANDING THAT THIS OFFICE WOULD TALK TO MR LENG AT ANY TIME HE REQUESTS.

OPINION OF THIS OFFICE IS THAT PLAINTIFF IS PLEASED THAT SETTLEMENT NEGOTIATIONS HAVE BEGUN; PLAINTIFF EXPECTS TO WAIT FOR USG OFFER TO BE INCREASED PRIOR TO COURT DATE. PLAINTIFF'S RANGE OF ACCEPTABLE OFFERS HAS STEADILY DECREASED AND WILL CONTINUE TO DO SO. THIS OFFICE EMPHASIZED FINALITY OF TWO HUNDRED FIFTY THOUSAND BAHT (BAHT 250,000) FIGURE, AND WE BELIEVE PLAINTIFF WILL ACCEPT FIRM OFFER ON COURT-HOUSE STEPS, ESPECIALLY SINCE THE JUDGE HAS EMPHASIZED THE NECESSITY OF SETTLEMENT. LENG'S ATTORNEY MENTIONED AS AN ASIDE TO OUR THAI ATTORNEY THAT HE BELIEVES THEIR CHANCES OF PREVAILING IN COURT ARE SLIM. WE BELIEVE THE ATTORNEY IS RECOMMENDING SETTLEMENT. REQUEST AUTHORIZATION TO MAKE WRITTEN OFFER OF TWO HUNDRED FIFTY THOUSAND BAHT (BAHT 250,000) ON BASIS OUTLINED ABOVE PRIOR TO COURT APPEARANCE ON 11 APRIL 1975.

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2. RECOMMEND GRANT OF AUTHORIZATION REQUESTED.
KINTNER

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